

RESPONSE TO OFFICE ACTION

A. Status of the Claims

Claims 1, 2, and 4-10 are currently pending and under consideration in the case and are presented herein for reconsideration.

B. Rejection Under 35 U.S.C. §103

The Action maintains the rejection under 35 U.S.C. § 103(a) over Rhodes (U.S. Patent No. 5,710,368) in view of Russell *et al.* (EPO 0430511A1) and in view of Botterman *et al.* (*Herbic. Resist. Weeds Crops*, 1991). Applicants respectfully traverse.

The pending Action asserts at page 5, 3rd paragraph, that although it was previously argued that Rhodes cannot be used as prior art, Applicants had failed to provide a conspicuous statement asserting that the present application and the invention of Rhodes were commonly owned, or subject to an obligation of assignment to Asgrow Seed Company, at the time the invention was made.

In response, Applicants hereby state that the present application and the invention of Rhodes were commonly owned, or subject to an obligation of assignment to Asgrow Seed Company, at the time the invention was made. This is further demonstrated by Example 2 of the current Specification which, for instance, explicitly discusses development of Soybean variety 924181339, the subject of Rhodes. Applicants further respectfully submit a Declaration by inventor Alan Walker dated October 9, 2007, and submitted regarding a similar rejection in related application U.S. Ser. No. 11/482,859. For instance in sections 6-7, Dr. Walker states that William Rhodes, the inventor of U.S. Patent 5,710,368, derived the concept of that invention from the present inventors. The invention claimed in the present application and as disclosed in

Rhodes were commonly owned or were therefore subject to an obligation of assignment of ownership to the same party, Asgrow Seed Co., at the time the present invention was made. A copy of the assignment record information applying to the present application and to U.S. Patents 5,710,368 and 5,659,120, also discussed by Dr. Walker, is attached to the Walker declaration. Applicants submit that the Rhodes reference is therefore not properly applied as prior art, and respectfully request withdrawal of rejections made in view of Rhodes. In view of this, the criticality of the Rhodes reference to the rejection made, and the substantial evidence presented on the record affirmatively establishing the nonobviousness of the invention, for instance as explained in the Declaration of Dr. Joseph Byrum, withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

C. **Conclusion**

The examiner is invited to contact the undersigned with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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